md ACCOUNTANTS & AUDITORS

*With Compliments*

## SECTION 7C – IS YOUR TRUST AFFECTED BY THE NEW TAX LEGISLATION?

**The new tax legislation relates to any loan, advance or credit made to a trust, by a natural person or a company that is a connected person to the trust where interest is not charged, or interest is charged at a lower rate than the official rate (currently 7.75% based on the repo rate plus 1%). In terms of Section 7C of the Income Tax Act that came into effect on 01 March 2017, the difference in interest between the official rate and what is charged will be deemed to be a donation made on the last day of the year of assessment of the trust. Donations Tax will be payable at a rate of 20% on the interest differential by the person granting the loan by 31 March of each year.**

**We are sending further communication to our Trust clients to assist them in managing the tax impact of the new legislation.**

**Please contact us should you require any assistance.**

**Regards**
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## In this Issue



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**September 2017**

## DIRECTORS' MEETING MINUTES: WHY ARE THEY SO IMPORTANT?

The Companies Act (the Act) gives directors the power to run and manage the company's business. In return it places responsibilities and personal liabilities on directors who do not fulfil their fiduciary duties.

### *What is required of directors' meeting minutes?*

Meetings of directors are to be kept and must contain at least:

- All resolutions passed at meetings (these need to be sequentially numbered and dated), and
- Any declarations of conflicts of interest.

As meetings of directors decide on the strategic direction of the company, the recording of these meetings is critical in reflecting what decisions are taken and how they are arrived at.

The Act also requires that directors understand the issues facing the company and take time to formulate their own, independent views, so they can actively contribute at directors meetings. The minutes should also reflect this.

Adequate control is to be exercised over minutes to ensure they are a fair reflection of the meeting. They should be circulated amongst the directors to prevent any omissions or misleading statements. As illustrated by recent revelations on State Owned Companies, this is a vital point to prevent malfeasance and ensure directors act only in the best interests of the company.

### *The golden rules of good minutes*

Like a good newspaper article, minutes should follow the 5 Ws:

- **Who?** The names of the attendees and who sent apologies;

- **What?** What actually happened at the meeting, how the agenda was followed, the decisions that were made and significant events that had a bearing on these decisions. As someone said – it should not be a ball by ball commentary but must contain sufficient information to capture the essence of the meeting.

- **Where?** The minutes are kept by the company secretary or one of the directors and secured in a safe place.

- **When?** Minutes should be done timeously after meetings and circulated amongst the board whilst the meeting is fresh in the minds of the directors.

- **Why?** Directors' minutes go to the heart of the business. They are the most important recordings of how and why decisions were taken. Take due care in recording them.

Finally, there needs to be a balance between confidentiality and transparency in terms of disclosure to staff and stakeholders. As minutes can be used by statutory bodies (such as SARS, the Competition Board etc), it is best to get a legal opinion as to what to record about contentious issues.

## YOUR WILL: THE MASTER OF THE HIGH COURT WANTS QUALIFIED PEOPLE TO ASSIST "LAY" EXECUTORS


Many people nominate either their spouse or children to be the executor/s of their deceased estate.

When the nominated person presents him or herself to the Master of the High Court ("the Master") to get their Letter of Executorship, they could be in for a shock. They may well be told at the reception desk that only qualified lawyers, accountants or firms that specialise in winding up estates will be given a Letter of Executorship. If the executor does not fit into one of these categories, he or she will be classified as a "lay" person, which means that there are bound to be additional administrative problems in finalising estate matters.

If an executor is indeed told this, it is not accurate in that "lay" persons can be appointed as executors; in which event however, the Master of the High Court will want to see suitably qualified people or organisations appointed as their agents.

This may have implications for you when drafting your will.

### *Why has this happened?*

Winding up an estate is a specialised business and the Master in the past found that executors without the requisite skills floundered, which resulted in delays in winding up the estate. The Master therefore had to frequently and routinely intervene to appoint an adequately skilled executor.

### *Appointing a qualified agent*

If the executor does not have the requisite skills, the Master will strongly encourage the executor to appoint an agent to assist. This agent could be from a firm specialising in deceased estates, an attorney or an accountant.

The agent will effectively work for the executor, who can negotiate the agent's contractual terms and fees. Importantly, if the agent does not fulfil the terms agreed on, the executor may replace the agent.

The agent appointed or replaced by the executor must notify the Master that he or she has the skills to assist with the winding up of the estate.

### *What to do when drafting your will*

When drawing up your will, keep this in mind. Either appoint a professional executor upfront, or, if your nominated executor will need help when winding up your estate, why not suggest (in a separate note to your choice of executor) someone suitably qualified you trust to assist with the winding up? That way you and the executor can negotiate the terms with the agent and know that your estate will be in good hands.

It is better to be proactive when preparing your will to avoid delays and possible extra costs in winding up the estate.

**SARS' PLANS TO TAX INCOME EARNED ABROAD**

As the law currently stands, if a South African tax resident works abroad for 183 days or more (of which 60 days must run consecutively) in a year, that person is not taxed locally on foreign based earnings.

Treasury has however released draft legislation which if adopted will repeal this exemption.

For many South African employers and employees this could have serious consequences, particularly cash flow implications.

***The proposed changes***

When the ex-Minister of Finance presented his Budget in February 2017, he proposed that residents working abroad should be taxed if the country they worked in charged no income tax. It is inequitable, he argued, that these people should pay no tax at all.

However, the draft new law goes much further than the ex-Minister suggested and proposes taxing any differences between taxes charged abroad and South African tax rates. If, for example, you work abroad for more than six months and the tax rate in the other country is 25%, you will be liable in South Africa for any difference between that 25% and the rate at which you would be taxed in terms of our law (the maximum tax rate here is 45%).

The new rules are proposed to come into effect from 1 March 2019 (i.e. the 2020 tax year for individuals).

***Implications for employers and employees***

When employers have staff working abroad, salary packages are designed around the tax free element or reduced tax paid offshore. Employers will thus have to reconsider these packages to ensure that employees receive the same take home income.

In cases when employees work abroad at lower tax rates, they are taxed in the country where they work. They will, based on the proposed changes, also be taxed in South Africa on any difference between the offshore country's tax rates and local tax rates. The employees will receive a tax credit for the tax they have paid abroad. However, they will only be able to do this at the time when they submit their tax return. Receiving a refund from SARS and getting this credit approved by SARS is likely to be a time consuming process. These employees will thus be penalised on a cash flow basis, which would also increase the employers' administration workload as they may have to consider bridging loans to employees awaiting their tax credit.

These earnings will usually be subject to Double Tax Agreements (DTAs) which vary by country (we have signed DTAs with 76 countries). Understanding and applying these various DTAs will be onerous for both employers and employees.

***Employees' potential reaction and the danger for our economy***

Employees who work abroad are generally speaking highly skilled and globally marketable. They could therefore easily choose to take up tax residency in a low tax jurisdiction. This will mean renouncing South African tax residence status, which will trigger 18% capital gains tax on their assets.

The likelihood is that South Africa will lose a significant number of skilled individuals to offshore countries. We already have a skills shortage in South Africa and to lose more skills will have a further detrimental effect on the economy. Many multinational companies use South Africa as a springboard into Africa and employ staff in countries on the continent. These individuals could decide to re-locate elsewhere, such as Mauritius, which offers low tax rates and sophisticated financial services.

Businesses and employees affected by this potential change to the Income Tax Act should follow the process of the draft laws until they become legislation – probably at year end or early next year. This is because the draft laws have been opposed by sections of the business community and thus there may be changes made when the legislation is finalised. Consider also participating in the process by making your own submissions on this draft legislation - the result may be a better outcome for all involved.

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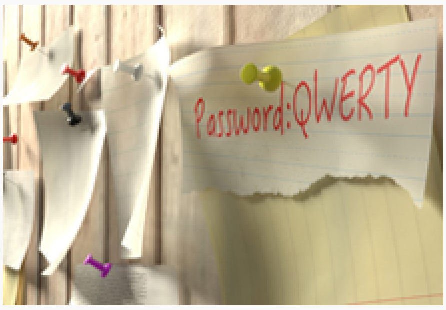
### THE PASSWORD GURU GOT IT ALL WRONG!




How many times have we entered a website and been asked to enter a new password which is at least 8 characters long and contains 1 capital letter, 1 number and 1 symbol like "@"? We end up with a password that is impossible to remember. The temptation is to use an easily-hacked word and/or to record it on a piece of paper stuck to the wall above our computer.

At least we "know" (assuming no one copies it from the wall) that we have a "secure password".

This type of password was invented by Bill Burr in 2003 and became accepted globally. Mr Burr is now a retired US government computer expert.

The problem is that he admits now this was all a mistake and says it takes less than one minute for sophisticated cyber hackers to crack a password such as "P@55w0rd".

It can however take up to a trillion years to crack a passphrase such as "mydoghasnonosehowdoeshesmell". If you take a passphrase you are familiar with, then it will be relatively easy to remember.

Why not see who can come up with the best passphrase for your office or family? Choose something easy to remember – how about "getlostcybertoffeenosedbothacker"?

Seriously, consider changing your password. There will be confusion as many IT consultants will almost certainly stand by current password methodology; and some sites will continue to insist on symbols and capitals. Speak to an IT consultant you trust if you have any further queries.

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### YOUR TAX DEADLINES FOR SEPTEMBER

Provisional and non-provisional taxpayers who do their 2017 Income Tax returns manually and post them or use a SARS branch drop box need to get their return to SARS on or by 22 September 2017.


The third provisional payment for the 2016/2017 tax year is due by 29 September 2017. This payment is voluntary and you only need to make it if you have underestimated your tax liability for 2016/2017 and you wish to avoid penalties and interest.

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